87-1841

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

JIM LEE SCOTT, Petitioner,

v.

THE STATE OF GEORGIA, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE GEORGIA COURT OF APPEALS

Jim Lee Scott, pro se
1075 Ormewood Ave. SE
Atlanta, Ga. 30316
627-5812 (404)

3 QUESTIONS PRESENTED

1. How much coercion, and what forms and kinds of coercion, should be held as being allowable or necessary or harmless or due, under our system of criminal justice, in order to induce or force a defendant to succomb to the prosecutor's thesis that he is guilty, and that his case should be pleabargained out--without trial?

2. After due process of law has been ignored and violated by the state repeatedly in the early, pre-trial stages of criminal procedure, may the state then rely upon a further denial of fairness <u>at</u> trial date, in order to "convict" a defendant, and not be held accountable at all for the long train of abuses which <u>preceded</u>, and partially led up to, a coerced pleabargain?

3. In a criminal case, does the defense attourney owe the higher duty of

loyalty to his client, the defendant, or does he owe said higher duty to the system of bargaining and dealing upon which our "adversarial" officers of the court now do so heavily rely (for about 90 % of criminal cases)?

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TO THE GEORGIA COURT OF APPEALS

The petitioner pro se, Jim Lee Scott, respectfully prays that a writ of certiorari issue to review the opinion of the Court of Appeals of Georgia, which was entered in the above-entitled proceeding on Jan. 4, 1988.

OPINIONS BELOW

The opinion of the Court of Appeals of Georgia, including its denial of rehearing motion, is, to the best of petitioner's knowledge, unreported yet; and petitioner has faithfully re-typed same in the appendix hereto, at p. Aa1, infra.

The opinion of the Supreme Court of Georgia, such as it was, likewise is not

reported officially anywhere yet, according to petitioner's understanding; and petitioner in the appendix hereto, at p. Aa13, infra, includes a faithful re-typing of those two little postcards which he received in his mail, being the sole communication of judgment to him from that honourable court in this case.

The opinions of the United States Magistrate in the United States District Court for the Northern District of Georgia, Atlanta Division, are also, petitioner believes, unreported; yet he takes great pride and comfort and joy in reproducing said opinions in the appendix hereto, at p. Ab21, infra.

JURISDICTION

Invoking federal jurisdiction under 28 U.S.C. s1257, petitioner hereby comes before and regretfully troubles this honourable court, after having not received an acceptable decision heretofore from

the trial or appellate courts of his state, the State of Georgia.

On March 23, 1987, petitioner was "convicted" by the State Court of DeKalb County, Georgia, on a count of simple battery. On April 17, 1987, petitioner's timely motion for vacatur of nolo contendere plea was denied by the trial judge. On Jan. 4, 1988, petitioner's appeal to the Georgia Court of Appeals was denied. On Jan. 19, 1988, petitioner's motion for rehearing in said honourable court was denied. On Feb. 18, 1988, petitioner's petition for writ of certiorari was denied by the Supreme Court of Georgia. On March 2, 1988, petitioner's motion for rehearing in said honourable court was denied.

FURTHERMORE, on Jan. 6, 1988, in the United States District Court for the Northern District of Georgia, Atlanta Division, an honourable magistrate (truly hon-

ourable magistrate) issued an ORDER whereby this petitioner's federal habeas action needed to be responded to by the appropriate agents of the State of Georgia.

AND IN ADDITION, on Feb. 25, 1988, in the same honourable court, the same honourable magistrate issued ORDERS whereby the Georgia Court of Appeals was severed from being a specifically-named respondent in this action, and whereby the State of Georgia, with its attourney general as named agent and respondent, remains as the opposing party in said action, which is now being held in abeyance and stayed, in effect, until this petitioner's direct appellate procedures shall be exhausted. Thus, petitioner's collateral appeals now still await the results which may be gained by his direct ones.

STATEMENT OF THE CASE

(An American Tragedy,
not by Theodore Dreiser,
but by the instant petitioner,
and being fact,
no fiction atall.)

Late June, 1986: petitioner places an advert in a local community newspaper, seeking a "companion".

Early July, 1986: among the eight women who reply, one's letter really catches his eye, his heart, all of him.

Late July, 1986: petitioner proposes marriage to the dear lady; she thinks it over for app. 10 seconds and says, "Yes."

July-November, 1986: the romance is rocky yet reasonably rewarding.

November 2, 1986: petitioner's fiancee becomes also his prosecutrix, as she swears out a batch of misdemeanor criminal warrants against him.

Said warrants were for allegedly

"shoving" her and her minor daughter, and for an alleged criminal tresspass in their apartment. Shortly thereafter the prosecutrix also heaped on a charge of robbery against petitioner over the sum of $40.00 cash. The initial triumvirate of charges was lodged with the DeKalb County authorities; and the subsequent robbery charge was placed with the Decatur, city, authorities.

(Before proceeding further, petitioner must point out again three background material facts of this case:

1. Prosecutrix really had been battered horribly by the previous man in her life, her divorced second husband, against whom no effective criminal prosecution was ever brought; and prosecutrix and her little daughter had actually been residents of a local battered women's shelter house, just a few months before this petitioner met them and came into their

lives.

2. Prosecutrix does very unfortunately have a long and documented history of mental or emotional problems, having undergone intermittent treatments for same for the latter half of her 33 years, with said problems being greatly exaggerated by the recent abusive relationship with her second ex-husband.

3. Petitioner, on the other hand, is a feminist activist, having joined wholeheartedly the National Organization For Women in 1981, and being, for a male in this society, one who is extremely empathetic with and sensitive to all the issues dealt with by our society's feminist movement, including the issue of men battering women and getting away with it.)

Concerning the robbery charge mentioned above, upon a short interrogation being conducted by a police detective with this petitioner, no formal robbery charge

was ever brought against him.

Those other, first three charges fared worse, or better, depending upon one's perspective. A DeKalb County Magistrate apparently believed the prosecutrix's story. Approximately ten days later, personnel from the Fulton County sheriff's dept. arrested petitioner at his home about supper time. At about 2:00 AM that night, he paid $1,050.00 to get out of the DeKalb County lockup.

On his next convenient day off from work, Nov. 17, 1986, petitioner applied for a cross-criminal warrant against his prosecutrix, showing to the Magistrate the deep bite-mark wound on his left arm which had not healed completely during the intervening two weeks from date of incident.

The DeKalb County Magistrate (a different one from the one which prosecutrix had seen earlier) wrote upon petitioner's

application the words, "SERVING CROSS WARRANT", dated and signed it, and instructed petitioner to take his copy of said document to show to the solicitor.

Petitioner eventually did just that, only to have said solicitor literally throw the document back across his desk, accompanied by his epithet that petitioner had "the wrong attitude".

Well before arraignment date, petitioner and prosecutrix visited the DeKalb County Courthouse together to drop our various actions against each other. Petitioner did succeed in getting dropped his $6,000.00+ civil suit against her; but then she did not succeed in dropping her later-brought misdemeanor charges against him.

The assistant solicitor blocked this, alleging that the charges were too serious to drop, simply and automatically because a minor child had been listed as

one alleged victim of the shoving incident. Assistant solicitor also threatened to send a social worker into prosecutrix's apartment, to see whether her parental custody of her daughter was in order. Naturally this had a wonderful effect upon the state of mind of petitioner's fiancee-prosecutrix, as might be expected.

At his arraignment appearance, petitioner, with the prosecutrix accompanying (for "moral support", she said) heard the solicitor instruct all of us accused persons, being packed like sardines in there, to the effect that if we were without a remunerated member of the bar standing beside us at said appearance we could only say either guilty or not guilty, and that was absolutely it.

Notwithstanding such humane treatment, petitioner did succeed in demanding a jury trial upon being called up to a table

where the solicitor was busily checking off places on a form whereon were pre-printed such beautifully esoteric sentiments as "I hereby waive/acknowledge arraignment".

At this point, petitioner began to get rather busy at that place which has become now his favourite haunt over the past year or so--the law library at the Emory University Law School.

The course of instruction in The Law for this petitioner has been a self-study project, intensive in nature, limited to the problem at hand, while recovering from and reacting to the latest moves all along the way promulgated by the opposing party here, who is the criminal justice system of the State of Georgia. Thus, petitioner to this day still has no comprehensive, widely-based education in The Law, although he is working on that now whenever he can get the time.

Fully five (5) weeks before trial

date, petitioner began to file pre-trial discovery motions for the defense, which even the code in Georgia provides for to some token degree.

Said discovery motions were ignored by the trial judge and solicitor. Petitioner, perturbed a bit at that, filed a petition for extraordinary writs in the Superior Court having jurisdiction over the trial court, in order to enforce due process in the honoring of said discovery motions. (Please see the accompanying Sub-petition For Writ Of Supervisory Control included herewith at page 32 infra.)

(Petitioner, on August 8, 1987, pled grovellingly with the Ga. Ct. of App. by means of a Special Motion to consider the record of this case in the DeKalb Superior Court as well as those parts of it which were in the DeKalb State Court, but they would not.

It is apparent to petitioner that a

strategy of the state here is to keep the various facets of this case bifurcated and completely apart from each other, as the several pieces of a jigsaw puzzle may lay scattered on a living-room floor, so that a perfectly-constructed picture of their violations of due process may never come into sharp focus--a strategy of theirs which this petitioner is resolved to defeat, with the help of his federal judiciary.)

One not-trivial "Catch-22" which came into play here was that petitioner's trial judge, at the time petitioner filed his petition for extraordinary writs (five (5) days before trial date), had moved up in the world and was temporarily "sitting in" on the bench in that Superior Court. Because of this nifty move, and perhaps also because of some possible technical shortcomings in the service of process (though petitioner questions this), that

petition for extraordinary writs was of no avail to petitioner in time.

About two weeks before trial date, petitioner, upon hearing repeatedly the well-intentioned advices of many of his close friends, finally relented and proceeded to commit one of the worst mistakes of his entire lifetime, as he went and hired a daggone lawyer to help with his defense against those misdemeanor so-called criminal charges.

Petitioner's candid and sincere opinion now is that almost any criminal defendant facing almost any charges in our justice system would be far better off conducting his own defense--if he is innocent--than he would be upon hiring almost any criminal "defense" lawyer to represent him. Petitioner does mean this, honestly, for he has learned that most lawyers presume their clients to be guilty, and that they they feel they are

really working for their system instead of for their client. Thus petitioner has attacked our very system of so-called "adversary" attourneys as being a thorough sham in this day and time. (Please see Brief For Appellant in the Ga. Ct. of App.--enumeration of error #11.)

So the trial date came, March 23, 1987. Petitioner's "defense" attourney, whom he had contacted two weeks earlier, told this client to expect the getting of a continuance at said trial date appearance. Unbeknowngst to petitioner, this "defense" lawyer, who had been admitted to practice law in this state a bare nine months before, and who had established no connection whatsoever with our local association of criminal defense lawyers, had already before trial date gotten in touch by telephone with his law-school classmate and old friend in the DeKalb County Solicitor's Office, and had begun

to plan the deal or "bargain" whereby this sheep-thrown-to-the-wolves client might be sold down the river, or up the creek, take your pick. An assistant solicitor of De-Kalb County clearly admits as much in her brief to the Ga. Ct. of App.

Quite frankly, to this day, this petitioner dose not know which "officer of the court" to believe, concerning <u>just how early</u> a "bargain" had been struck between them disposing of this writer's case; and, again, quite frankly, petitioner now really does not believe either one of those "officers of the court" about anything anyway.

At all events, by means of lies, threats, intimidations, and misinformations--coupled together with the groundwork already laid by the abundant record of denial of due process of law which petitioner had been forced to observe throughout the pre-trial stages of this

case--this petitioner was coerced to go along with the utterly hypocritical theatre which the opposing party here euphemistically terms a "bargain" of entering of nolc.

It may indeed have been a bargain for them, personally, in their crowded docket; but for this petitioner it was something else entirely, and even now he truly cannot locate within his memory or in the dictionary or in the thesaurus a synonymous term which satisfactorily describes it. A negative definition must suffice: it was not truly a "bargain", whatever it was.

But the deal-makers thought they had concluded the matter. Then this petitioner, after taking a day or two to recover from the severe psychological shock at what he had been put through on his "day in court", March 23, 1987, arose from his convalescent mat to state that this sort

of travesty against justice must not go unchallenged. Petitioner has been restating same constantly ever since. This is what brings us to our United States Supreme Court now. Furthermore, this petitioner, as long as he shall continue to live, shall never cease bringing this issue before our courts of review until the problems addressed herein shall have been forthrightly addressed and truly solved. All adversaries or opposing parties who hope for the issue to just go away shall forever remain disappointed. That is final.

Sixteen days past his "conviction", petitioner filed his motion for vacatur of nolo contendere plea. The trial judge did order a hearing on this motion. At the hearing, an assistant solicitor maintained that the motion was not timely filed because date of filing was not within the same "term of court", and

therefore the merits of the motion should not even be reached.

The trial judge audibly approved, repeatedly, of said line of argument promulgated by the state, although this has most conveniently been erased from the official transcript of the proceedings.

An amendment to O.C.G.A. s17-10-1 (a), taking effect on July 1, 1986, had changed the law, taking away from the assistant solicitor and the trial judge their grounds for not reaching the merits and finding for this petitioner. But--no matter, and not to worry--the state appellate courts of Georgia continued to cover-up, and white-wash, and apologize insincerely for their DeKalb County State Court personnel.

Petitioner, upon his "conviction", had been sentenced to twelve months of completely unsupervised probation, and no ordered enrollment into any "Men Against

Violence" anti-battering counselling program, or any such deal as that (indeed why bother?--when you know that your defendant was not guilty and doesn't need it anyway!) and with the only special terms of probation being that he stay away from his fiancee wife-to-be and little adoptive daughter-to-be.

Three months and two days past the "conviction" and sentence, being the same date whereon petitioner filed his initial brief with the Ga. Ct. of App., June 25, 1987, petitioner received a phone call from his fiancee-prosecutrix.

The little girl had been raped. Fiancee, running low on funds, and facing her more-or-less normally rebellious 11-year-old daughter who did not want to go to the Y.M.C.A. day-care center anymore, had begun leaving the little girl in their apartment all day long while the mother went out to work.

An intruder, later described on "wanted" posters circulated by the Decatur city police as being a young black male, had broken into the apartment through a flimsy kitchen window and, at knifepoint, raped our little girl.

FURTHERMORE, by the end of January, 1988, being at that time about 10 ¼ months into petitioner's time period of "12 months probation", the situation had deteriorated in the inter-personal relationship between the mother and the daughter--both of whom **were** in fact victimized horribly by men, other than this petitioner, who really **were** "batterers"--to the extent that the DeKalb County Dept. of Family & Children Services finally stepped in to remove the custody of the little girl from her emotionally-troubled mother.

So at this late point, said mother (petitioner's fiancee-prosecutrix) has

begun to frequent again this petitioner's home, alleging that now she has not a friend in the world save yours truly, and then sometimes she still doubts whether she even has petitioner for a friend, confidant, solacer, counsellour.

Petitioner did type up a pro se document for his fiancee-prosecutrix to sign and file in her own behalf in the DeKalb County Juvenile Court, trying to protect her parental interests. No doubt this did "blow the minds", so to speak, of all the authorities who have so long been persecuting this petitioner with false accusations, judgments, sentences, etc., alleging that <u>he</u> had been the one who had gone "off his rocker", if ever so temporarily, and had committed some "battery" or other infraction.

Meanwhile, petitioner just the other day retained a good child-support lawyer hereabouts for his fiancee, at a fee of

$1,000.00, so that she may protect her custody and support payments at this time, as her ex-husband is momentarily to be extradited from Santa Clara County, California, on charges of child abandonment, contempt over the support payment order, and cocaine distribution. And that sorry scoundrel had the unmitigated gall to send to petitioner's fiancee a pencil-scrawled note from his jail cell out yonder in San Jose the other day, requesting that the little girl should be sent out there to live with him.

Also meanwhile, this petitioner has lately investigated the feasibility of bringing charges against all the lawyers--private and government--and all the judges--magistrate, state, & superior--who have screwed up the case against this petitioner.

Having the necessary forms and instruction pamphlets now from our state bar's

Attourney Grievance Commission and Judicial Qualifications Commission, the filing of these complaints shall now be the next order of business for this petitioner as soon as he has gotten the filing of this present Petition in our nation's highest court completed.

Thus, we now have a side contest produced in this affair, wherein are pitted all the lawyers and judges involved in this case against this petitioner; and they shall seek to protect their reputations, whilst this petitioner shall continue to seek to protect his.

Thus, after spending $640 for the "services" of a "defense" lawyer, over $500 for some fairly good advices and useful help from three (3) consulting appellate attourneys, hour upon hour in the law libraries, day upon day not working at any paying employment, night upon night crying over the situation, ream

upon ream of copy machine paper, stamp upon stamp and more for special fees at the post offices, plus all the lost opportunity for building the relationship with his fiancee, the tragic loss of "innocence" and health of our little girl, etc., etc., etc., we come down to the present juncture and the current date.

Now one may say--all of the above may be passing interesting; but what's it got to do with the price of justice in America?

Yea, but one may answer his own question: everything. Everything.

It is an American tragedy--for which our coerced-pleabargaining system may claim the major credit. And it is not over yet.

It is far from being over yet. Let no one mistake that.

REASONING FOR GRANTING THE WRIT

Learned Justices, the petitioner has formulated his questions presented, supra, in the manner in which he has, for he has learned that a mainstay alibi of the state in a situation such as this is its proclamation that any prosecution on its part against crime can reasonably fall under the heading of "coercion", and thus said state must be allowed unfettered free rein to proceed in the accomplishment of its duties to sieze and hold and punish all suspected culprit citizens for their alleged misconducts, for this is the essence of enforcement to a code of lawful behaviour.

Petitioner can see that argument. However, a line must be drawn somewhere; and petitioner maintains that, under our system, the state's legitimate abilities to coerce a "conviction" over a defendant are properly checked and balanced by some

few certain written-down safeguards which we dare not ignore.

All that beautiful phraseology, exemplified most heartily by the little pair of word couplets, "due process" and "equal protection", is not there for nothing. Petitioner would, in effect, send back to his over-zealous prosecutors their oft-used epithet: "America--love it or leave it".

Petitioner maintains that the preprinted form used to capture his signature at his coerced-pleabargained trial date was incorrect, illogical, illegal per se, and "repugnant" to the Sixth Amendment of the Constitution of the United States.

Notice, please, on appendix page Aa6 attached hereto, that among the "evidences" relied upon by the state appellate court to uphold petitioner's "conviction" was a document upon which was obtained

his signature at trial date, and that among the clauses pre-printed thereon lied this gem: "...The right to assistance of counsel during trial..."

Supposedly, this was among the "rights" which petitioner was called upon to "waive" at his "day in court".

Petitioner maintains that his prosecutors, in their zeal to follow the spirit of their national association's motto, "Organized Prosecution Against Organized Crime", have over-stepped grossly the boundaries by which they are Constitutionally limited.

Our Sixth Amendment does guarantee to any of us who ever may become a defendant facing criminal charges the right to assistance of counsel. Over the years, because of the ever-growing obfuscation and elaboration of our codes, this guarantee has become the single most important aspect of help afforded to a citizen in

such need.

For a state's prosecutors to even think of raising the proposition that a defendant should ever be asked to supposedly "waive" such a guarantee is repugnant beyond any amelioration or mitigation which arguments they seek to bring may supply in order to support their position.

Nor can they successfully argue that the two qualifying words which they tacked onto the end of said clause, namely, "...during trial", protects their little clause from attack.

This is because in the instant case, petitioner's State Court trial judge, by and through his own attourneys, the county attourneys of DeKalb County, Georgia, did move the Superior Court of his county to dismiss this petitioner's petition for extraordinary writs on grounds of mootness because "the trial took place as scheduled on March 23,

1987".

Petitioner maintains, on rock-solid ground, that "trial" refers not only to accepting of some plea or finding of guilt or innocence, but also to the sentencing phase--and even to post-sentencing remedies--as regards "assistance of counsel".

Indeed, for example, our criminal justice system is not permitted to commit that atrocious crime against humanity, a sentence and execution of death, without, supposedly anyway, an effective and loyal and zealous defense counsel standing beside the condemned person to also hear the grand words spoken from the bench that on a certain upcoming date, Mr. or Ms. Defendant, we shall snuff out your life to extract payment for your crime against society. Thus, even a crime against humanity, meting out payment for a crime against society, must be executed

properly under our system.

Because the state's most zealous prosecutors, in their pre-printed form, asked this petitioner to "waive" a right which cannot be completely waived under any circumstances, but especially attendant to the extremely coercive setting of pleabargaining, said pre-printed form was per se thereby rendered to be a contract null and void; and any and all further criminal procedure following same, and being based upon same, at petitioner's trial date, was also rendered null and void, and cannot stand in the light of day which yet shines forth from our blessed Document with all its hallowed Amendments.

In the interest of brevity, which petitioner has read is the single most important ingredient in such a writing as this, petitioner shall now further bring no more than his sub-petition for writ of

supervisory control, which follows immediately herewith:

Sub-Petition For Writ

Of Supervisory Control

NOW CONTINUES the petitioner, pro se, referring the Court to Black's Law Dictionary Rev. 4th, page 1787, top of column two, whereon is defined what he is about here.

And petitioner supposes that the effect of this move probably runs very close to being a motion to consolidate; then further petitioner supposes that the effect enjoined by this strategem would also perhaps run close to being an audacious request for this honourable Court to act nearly as a trial court in some respect here.

This is most extraordinary, petitioner readily acknowledges. However, extraordinary injustice sometimes requires extraordinary remedy; there is no getting a-

round it.

This honourable Court, notwithstanding its premier position in the judicial system of our nation-state, is also the first federal court wherein it is possible for this petitioner to obtain a hearing under our appellate procedure, as he understands it, in order that he may finally acquire a modicum measure of fairness and a ruling of vindication for his cause within the realm of direct appeal.

To be sure, collateral attack is already underway here in Atlanta, where it is presently stayed, being in the hands of an eminently-qualified United States Magistrate, The Honourable Allen L. Chancey, Jr. (Please notice, Your Honors, in the appendix hereto, how the words of this Hon. Magistrate contrast like unto day versus night against the words of petitioner's state appellate jurists.)

Now there is that certain civil action

#87-2720-6 which was brought in the Superior Court of DeKalb County, Georgia, which is now being appealed to the Court of Appeals of Georgia, with petitioner having recently sent in his check for $217.00 for its transcript copying and forwarding fees.

Said civil action is indeed most intimately related to the criminal case #87C25356 which was brought in the State Court of DeKalb County, Georgia, against this petitioner as defendant.

The crux of the controversy here is whether due process of law has been followed in the obtaining of a criminal conviction against this accused-defendant-appellant-petitioner. The County of DeKalb, and the State of Georgia, maintain that this has been done; petitioner says nay.

The lot befalls this honourable Court to decide upon who is right and

who is wrong. Petitioner, pro se, does indeed maintain that this, in fact, is the first court of law which he has been able to reach which can be a fair and impartial decider of the controversy at issue under direct review.

THEREFORE, this petition, with its sub-petition, is, in reality--reduced to its simplest title--a letter begging for help, praying for fairness, demanding justice.

CONCLUSION

May it please the cert pool and the Court, do please Your Honors intercept the case bearing DeKalb Sup. #87-2720-6, consolidate it with the case which bore DeKalb St. #87C25356, remove that case now bearing Ga. App. #75189 and Ga. #45454, and commandeer forthwith the whole she-bang on up yonder to yall's jurisdiction.

Please take a look at what has gone on

here in this "New York of the South". Petitioner would comment that "Howard Beach of the South" would be more like it, only without the saving grace of a "special prosecutor" being appointed from time to time.

Take a look at all of the paper trail in this case before Your Honors decide to uphold certain personnel in DeKalb County and the State of Georgia here, or whether to uphold this good old boy, this citizen, yours truly; and

Veritas,

Postscriptum:

Just by the way, yall may inform the Chief that this writer also once owned a "little blue Studebaker" which he too dearly loved. (Please see The Supreme Court: How It Was, How It Is, by William H. Rehnquist, page 18.)

Thus, a material facet of well-established and significant sort of spiritual

bonding exists between this questionably in-court litigant and his highest-placed Jurist which all those who have never been owners and lovers of their own little blue Studebakers would do extremely well not to under-evaluate or summarily dismiss as being irrelevant and not helpful.

Praecavere praeparare est. (To be aware is to be prepared; or, forewarned is forearmed.)

Jim Lee Scott

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1075 Ormewood Ave. SE
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1-404-627-5812

This ~~twenty-third~~ thirtieth day of March, 1988.

jls

jls

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

JIM LEE SCOTT, Petitioner,

v.

THE STATE OF GEORGIA, Respondent.

CERTIFICATE OF SERVICE

In the name of the President of the United States, comes now the petitioner to declare:

I, Jim Lee Scott, the pro se author of the foregoing Petition, do hereby certify that on the ~~23rd~~ 30th day of March, 1988, three (3) copies of this Petition For Writ Of Certiorari in this above-entitled case were mailed, first-class postage prepaid, certified, return receipt requested, in the U.S. Mail, to all the individuals now designated:

1. Solicitor General Charles Fried
   Department of Justice
   Washington, D.C. 20530

(cont'd.)

2. Georgia Att'y. Gen'l. Michael J. Bowers
   132 State Judicial Bldg.
   Atlanta, Ga. 30334
3. DeKalb Co. Sol. Ralph L. Bowden
   500 DeKalb County Courthouse
   Decatur, Ga. 30030
4. Clerk Joline B. Williams
   Georgia Supreme Court
   572 State Annex Bldg.
   244 Washington St.
   Atlanta, Ga. 30334
5. Clerk Victoria McLaughlin
   Georgia Court of Appeals
   433 State Judicial Bldg.
   Atlanta, Ga. 30334

Further certifieth the author that any and all other parties required to be served have been served.

Jim Lee Scott
3/~~23~~/88
30

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Aa1

(2)

McMurray, P.J.

Sognier & Beasley, J.J.

JAN 4-1988

In the Court of Appeals of Georgia

75189. SCOTT v. THE STATE.

McMURRAY, Presiding Judge.

Appellant entered a plea of nolo contendere to simple battery and was sentenced to 12 months in jail and payment of a $100 fine, with the provision that the jail term be suspended upon payment of the fine and converted to 12 months of unsupervised probation. Appellant paid the fine and subsequently filed a motion to vacate (withdraw) his plea, alleging in pertinent part ineffective assistance of counsel.

At a hearing, appellant argued that "... in a way (he) did understand what was going on and another way (he) didn't ..." when he entered his plea, that he

was "completely unprepared for it" and that he didn't believe his retained counsel "advised (him) correctly on what the law states about the offense of simple battery." Although appellant asserted a variety of arguments which were unrelated to the "knowing and voluntary" nature of his plea, no other relevant evidence was offered by appellant at the hearing.

The following evidence was adduced, in pertinent part, at the hearing in which appellant entered his plea: "THE COURT: Are you Jimmie Lee Scott? (APPELLANT): Yes, sir. THE COURT: Mr. Scott, do you understand that you are charged with simple battery? Do you understand the charges? (APPELLANT): Yes, sir. THE COURT: You understand the rights that you give up when you plead nolo contendere or guilty? (APPELLANT): Yes, sir. THE COURT: All right. Do you understand that the

maximum sentence is 12 months in custody and a $1,000.00 fine that this Court can impose on this offense? (APPELLANT): Yes, sir. THE COURT: You are represented by Mr. Farnham? (APPELLANT): Yes, sir. THE COURT: And he is here in court with you today? (APPELLANT): Yes, sir. THE COURT: And you have explained this charge to him and he has explained to you the charge and the rights you give up when you enter a plea, the maximum sentence, that sort of thing? (APPELLANT): Yes, sir. THE COURT: Okay. Are you satisfied with his services? (APPELLANT): Yes, sir. THE COURT: And is your plea voluntary? (APPELLANT): Yes, sir. THE COURT: All right. I find it to be voluntary. Mr. Farnham, do you want to say anything on his behalf? (DEFENSE ATTOURNEY): Yes, Your Honor. Mr. Scott is a man of great principles, and this particular charge of simple battery against him, he has opted

to receive first offender treatment and he understands that this is generally used for felony charges, however, he has never had any charges brought against him in his entire lifetime and he feels in this particular issue, since the issue of simple battery, that he takes extremely serious and would not like to have something like that on his record. Under the circumstances, he wishes to opt for that privilege at this time. (STATE'S ATTORNEY): Your Honor, we are recommending a $100.00 fine, 12 months probation, and that Mr. Scott be ordered to stay away from (the victim) and (the victim's mother) ... THE COURT: ... All right. Mr. Scott, I accept your nolo contendere plea. As I said, I find it to be voluntary. I order that you pay a fine of $100.00 serving 12 months on non-reporting probation. And as a condition of your probation, you are not to go about or

contact or have any harassing conduct in person or by phone or mail or any other way with (the victim) or (the victim's mother). Leave them alone, stay away from them. (APPELLANT): That's easy to do."

Additionally, appellant executed a document entitled "RECORD OF DEFENDANT PRIOR TO ENTERING PLEA," which provided, in pertinent part, as follows:

"I am not under the influence of alcohol or drugs and I am not suffering from any mental or physical disability.

"I have been advised of the nature of the charge against me, the maximum and minimum punishment provided by law and my right to be represented by a private attorney, or by a public defender, if I am eligible.

"I understand that by entering a plea of guilty or nolo contendere that I waive:

The right to trial by jury;

The presumption of innocence;

The right to confront witnesses against me;

The right to subpoena witnesses;

The right to testify and to offer other evidence;

The right to assistance of counsel during trial; and

The right not to incriminate myself. "I also understand that by pleading not guilty I will obtain a jury/bench trial. If I choose to remain silent and not enter a plea, a plea of not guilty will be entered on my behalf and I will obtain a jury trial.

"I now desire to enter my plea of NOLO CONTENDERE to the charge against me. It is free and voluntary. I have not been told what sentence will be imposed. No promises or threats have been made to me by any District Attorney, Solicitor, Lawyer, Policeman or other person to induce me to enter this plea.

"I understand that if I am placed on non-reporting or reporting probation, I cannot violate any criminal laws of any governmental unit or any special conditions of probation without being subject to revocation for the balance of the sentence. "I hereby acknowledge/waive receipt of a copy of the accusation in the above-styled case. I swear under penalties of perjury that these statements are true."

The trial court denied appellant's motion tc vacate (withdraw) his plea of nolo contendere and appellant filed this appeal, pro se. Held:

1. First, the State seeks dismissal of appellant's appeal, arguing that it is moot because appellant paid the entire $100 fine prior to filing his notice of appeal.

In Baker v. State, 240 Ga. 431 (241 SE2d 187), the Supreme Court dismissed the appeal as moot because the appellant

had served his sentence prior to consideration of the appeal. More recently, this court dismissed the appeal in Gamble v. State, 181 Ga. App. 871 (354 SE2d 174), for virtually the same reasons. Contrary to the State's contentions, however, these holdings are not dispositive in the case sub judice because appellant has not served his entire sentence. Appellant remains on probation through March 23, 1988. Compare Chaplin v. State, 141 Ga. App. 788, 789 (1) (234 SE2d 330). Accordingly, we shall address the merits of appellant's appeal.

2. In his tenth enumeration of error, appellant contends "(t)he plea-bargaining system is illegal, because it violates the U. S. Const. Amend. 5, 6 and 14." We have examined appellant's briefs and enumeration of errors in their entirety and we find no argument or citation of authority

to support this assertion. Consequently, this enumeration of error is deemed abandoned pursuant to Rule 15 (c) (2) of the Rules of the Court of Appeals of Georgia. See Isbell v. State, 179 Ga. App. 363, 366 (3) (346 SE2d 857).

3. With regard to appellant's assertions of ineffective assistance of counsel, our Supreme Court has "followed the rule that when a person indicates a desire to enter a guilty plea, the duty of counsel is limited to ascertaining whether the decision to plead is voluntarily and knowingly made. Walker v. Hopper, 234 Ga. 123 (214 SE2d 553) (1975)." Wharton v. Jones, 248 Ga. 265, 266 (282 SE2d 310). In the case sub judice, appellant presented no competent evidence showing that his retained counsel breached this duty. On the contrary, before entering his plea, appellant affirmed that his attorney ex-

plained to him the consequences of entering a plea. Appellant also responded affirmatively to the trial court's inquiry as to whether he was satisfied with his attorney's representation. See Spriggs v. State, 139 Ga. App. 586, 587 (2) (228 SE2d 727).

Contrary to appellant's assertions, noyhing in the record or transcripts suggests that defense counsel acted other than honestly, diligently and in good faith. Compare Wharton v. Jones, 248 Ga. 265, supra. On the basis of the evidence before the trial court in the case sub judice, the court was authorized to conclude that appellant's plea was freely and voluntarily entered and was not adversely influenced by his attorney's representation. "'After the pronouncement of a sentence, a ruling on a motion to withdraw a guilty plea is within the

sound discretion of the trial court. This discretion will not be disturbed on appeal unless manifestly abused.' Crump v. State, 154 Ga. App. 359, 360 (268 SE2d 411) (1980)." Tahamtani v. State, 177 Ga. App. 52, 53 (338 SE2d 488). We find no such abuse of discretion in the case sub judice. See Annotations, "Adequacy of Defense Counsel's Representation of Criminal Client Regarding Guilty Pleas," 10 ALR4th 8 (1981).

4. Appellant's remaining assertions have either been rendered moot or are not relevant to this appeal.

Judgment affirmed. Sognier and Beasley, JJ., concur. Beasley, J., also concurs specially.

75189. SCOTT v. THE STATE. McM-179

BEASLEY, Judge, concurring specially.

I fully concur. As to the validity of the plea, compare Strickland v. State,

Ga. App. (Case No. 74899, decided December 4, 1987.)

Court of Appeals

of the State of Georgia

ATLANTA, January 19, 1988

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

75189. JIM LEE SCOTT v. THE STATE

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia

CLERK'S OFFICE, ATLANTA JAN 19 1988

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Victoria McLaughlin CLERK (stamped sig.)

A a 13

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

Atlanta...FEB 18 1988

Case No. 45454, Jim Lee Scott v. The State

The Supreme Court today denied the writ of certiorari in this case. All the justices concur.

Very truly yours,

JOLINE B. WILLIAMS, Clerk

CLERK'S OFFICE, SUPREME COURT OF GEORGIA

ATLANTA 3/2/88

The motion for a rehearing was denied today:

Case No. 45454. Scott v. The State

Yours very truly,

MRS. JOLINE B. WILLIAMS,

Clerk

IN THE COURT OF APPEALS

STATE OF GEORGIA

JIM LEE SCOTT,

Appellant,

v. CASE NO. 75189

THE STATE,

Appellee.

* * * * * * *

REQUEST TO THE CLERK
TO BE PREPARED TO
CERTIFY, NUMBER AND TRANSMIT
THE RECORD OF THIS CASE
TO THE CLERK OF
THE SUPREME COURT
OF THE UNITED STATES
and
RESTATEMENT OF MOTION
FOR STAY OF REMITTITUR
IN THIS CASE

NOW COMES the above-named appellant, Jim Lee Scott, pro se, to give to the Clerk timely notice that he does indeed intend to ask the highest and only re-

maining court of review which is duly constituted within our nation-state to review his case on direct appeal through petition for writ of certiorari.

If said petition shall become one of the 150 out of 4,000 per annum which is granted, then this honourable court must be prepared to forward the record up there to D.C. upon that Clerk's request.

The date of last denial to this appellant in the courts of Georgia was on March 2, 1988, whereon the Supreme Court of Georgia denied his motion for rehearing. Sixty days past that date will be Mayday, May 1, 1988. Before that date, appellant will have sent his forty (40) copies on paper sized 6 1/8 X 9 1/4 inches, etc., etc., etc. on up there.

FURTHERMORE, notwithstanding the informal, oral assurance over the telephone this past Friday from the Clerks of this honourable court to this appellant that

he has certainly informed this honourable court previously by means of three (3) copies of his recent motion for rehearing including motion for stay of remittitur in The Supreme Court Of The State Of Georgia, the petitioner hereby follows the kind direction of the Clerk of that "brother court" by herewith addressing this motion anew and officially to this very honourable court "right away".

It is hereby so moved. Petitioner intends to exhaust his direct appeals in this case to the absolute fullest. If he shall not prevail in this case by that means, then he shall further proceed to exhaust his collateral appeals, if necessary--again, to the absolute fullest.

I, Jim Lee Scott, am not a "woman batterer" or "child batterer". I have never been such and never will become such. I am, rather, a man who sometimes, in some things, is naive, and is easily manipula-

ted in certain coercive situations. Finally, I am a man at least of some "principle" (ironically, to paraphrase my trial attourney's opening remark to my trial judge on March 23, 1987); and my good name and reputation is worth more to me than any material possessions I own or any accomplishments I could ever otherwise make with my life.

What is a man without his good name? Isn't he rather something less?

This sixth day of March, 1988.

Veritas,

(signature)

Jim Lee Scott, pro se
1075 Ormewood Ave. SE
Atlanta, Ga. 30316
627-5812

IN THE COURT OF APPEALS

STATE OF GEORGIA-

JIM LEE SCOTT,

Appellant,

v. CASE NO. 75189

THE STATE,

Appellee.

* * * * * * *

CERTIFICATE OF SERVICE

I, Jim Lee Scott, the pro se author of the foregoing Request and Restatement do hereby certify that a copy of same is being mailed with the required first-class postage affixed to the opposing party in this case and to these designated others:

1. Georgia Court Of Appeals Clerk's Office; 433 State Judicial Bldg.; Atlanta, Ga. 30334 (original & 2 copies).

2. The Clerk Of The Georgia Supreme Court; 572 State Annex Bldg.; 244 Washington St. SW; Atlanta, Ga. 30334.

3. Hon. Allen L. Chancey, Jr.; U.S. Magistrate; 1683 U.S. Courthouse; 75 Spring

St. SW; Atlanta, Ga. 30303.

4. Hon. G. Ernest Tidwell; U.S. District Court Judge; U.S. Courthouse; 75 Spring St. SW; Atlanta, Ga. 30303.

5. Georgia Attourney General Michael J. Bowers; First Ass't. Att'y. Gen'l. H. Perry Michael; Senior Ass't. Att'y. Gen'l. Stephanie B. Manis; Ass't. Att'y. Gen'l. Mark H. Cohen; First Ass't. Att'y. Gen'l. Marion O. Gordon; Senior Ass't. Att'y. Gen'l. William B. Hill, Jr.; Ass't. Att'y. Gen'l. Dennis R. Dunn; 132 State Judicial Bldg.; Atlanta, Ga. 30334.

6. DeKalb County Solicitor Ralph L. Bowden; Ass't. Sol. Debra J. Blum; 500 DeKalb County Courthouse; Decatur, Ga. 30030.

7. Hon. Jack M. McLaughlin; 604 DeKalb County Courthouse; Decatur, Ga. 30030.

8. Hon. Ronald P. Jayson; Magistrate Court Judge; 4400 Memorial Drive; Decatur, Ga. 30032.

9. Att'y. Alice C. Stewart; 1400 Banksouth Bldg.; 55 Marietta St. NW; Atlanta, Ga. 30303.

10. Att'y. Franklin N. Biggins; 1400 Banksouth Bldg.; 55 Marietta St. NW; Atlanta, Ga. 30303.

11. Att'y. David J. Farnham; 741 Piedmont Ave., Suite 700; Atlanta, Ga. 30308.

This sixth day of March, 1988.

Veritas,

(signature)

Jim Lee Scott, pro se
1075 Ormewood Ave. SE
Atlanta, Ga. 30316
627-5812

Ab 21

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

JIM LEE SCOTT,	:	
Petitioner,	:	
vs.	:	CIVIL ACTION
COURT OF APPEALS	:	NO. 1:87-cv-2766-GET
OF GEORGIA,	:	
and	:	ORDER
MICHAEL J. BOWERS,	:	
Attorney General	:	
of Georgia,	:	
Respondents.	:	

The above-named petitioner has filed this pro se petition for a writ of habeas corpus pursuant to the provisions of 28 U.S.C. ss2241 and 2254 attacking his conviction of simple battery on his plea of nolo contendere and sentence of twelve months probation in the state court of DeKalb County, Georgia, in March, 1986.[1]

[1] 1987.

Petitioner shows that he appealed his conviction to the Georgia Court of Appeals and has never been assigned a probation officer to name as respondent. In the circumstances,

IT IS ORDERED THAT:

(1) The Clerk of this Court is directed to serve a copy of the petition and this Order by certified mail on the respondent Attorney General of the State of Georgia and to mail a copy of this order to petitioner; and

(2) Respondent shall file an answer pursuant to the provisions of Rule 5 of the Rules Governing s2254 Proceedings or otherwise respond to the petition within twenty (20) days after service. The answer or response shall be accompanied by a memorandum of law. Petitioner will be allowed ten (10) days thereafter in which to file any reply pleading and memorandum of law.

(3) The Clerk is directed to resubmit this matter to the assigned Magistrate at the expiration of the above-allotted time period.

AND IT IS SO ORDERED this 6th day of January, 1988,

(signature)

ALLEN L. CHANCEY, JR.

UNITED STATES MAGISTRATE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

JIM LEE SCOTT,	:
Petitioner,	: CIVIL ACTION
vs.	: NO. 1:87-cv-2766-GET
MICHAEL J. BOWERS,	: ORDER ON RESPONDENT
Attorney General	: BOWERS' MOTION TO
of Georgia,	: DISMISS OR HOLD IN
et al.,	: ABEYANCE
Respondents.	:

Petitioner has filed this habeas cor-

pus action under 28 U.S.C. s2254 attacking his March, 1987, conviction of simple battery upon his plea of nolo contendere in the State Court of DeKalb County on the following grounds: (1) that his plea of nolo contendere was coerced and involuntary and his defense counsel rendered ineffective assistance; (2) that he filed timely pretrial motions which were not ruled upon; (3) that his trial counsel rendered ineffective assistance of counsel by failing to investigate the facts, interview witnesses, and falsely stating to petitioner on the date of trial that he had no option other than to plea bargain; and (4) denial of his right to an effective appeal. Petitioner has also included in ground 4 claims that his plea of nolo contendere was the result of a coerced plea bargain, a violation of his privilege against self-incrimination, and

that any attempt to bring petitioner to trial again would violate his right against double jeopardy. The matter is presently before the Court on respondent Bowers' motion to dismiss for failure to exhaust state remedies or alternatively, to hold the petition in abeyance. For the reasons that follow, the Magistrate will grant respondent's alternative motion to hold the petition in abeyance.

The pleadings and exhibits submitted by both petitioner and respondent Bowers show that the Georgia Court of Appeals issued a decision on January 4, 1988, upholding the trial court's denial of petitioner's motion to vacate or withdraw his plea of nolo contendere, denied petitioner's motion for a rehearing on January 19, 1988, and that on or about February 4, 1988, the petitioner filed a petition for certiorari in the Supreme Court of Georgia, which is now pending.

Thus, the Magistrate agrees with respondent Bowers that petitioner's case is still effectively under review by the Georgia appellate courts, and his conviction is not yet final under Georgia law, rendering his petition for federal habeas corpus petition relief premature. See Horton v. Wilkes, 250 Ga. 902, 904, 302 S.E.2d 94 (1983). Because petitioner is proceeding in this Court in pro se and has filed numerous pleadings, the Magistrate will not recommend dismissal of the petition at this time but will grant respondent's alternative motion to hold the petition in abeyance.

Respondent also maintains that petitioner has failed to exhaust his claim in ground 4 that he was denied an effective appeal in the state courts and that the instant petition ought to be dismissed as a mixed petition pursuant to Rose v. Lun-

dy, 455 U.S. 509 (1982), unless petitioner elects to delete this unexhausted claim. Further, respondent raises a question as to whether or not petitioner has raised additional claims that might be unexhausted. He points out that the copy of the petition served upon him refers to the four grounds as (a), (f), (i), and (j), indicating that petitioner may have raised other allegations in between these grounds which may or may not be exhausted. Petitioner states that the letters (a), (f), (i), and (j) on the four grounds raised merely refer to the list of grounds for relief in habeas proceedings contained in paragraph 12 of the form petition and that he has not omitted any grounds. However, petitioner does point out that in addition to the claim of denial of right of effective appeal in ground 4, he has raised claims (b) that his conviction was obtained by use of

coerced confession, (e) conviction obtained by a violation of privilege against self-incrimination, and (g) conviction obtained by a violation of protection against double jeopardy. It is noted that respondent has not addressed these claims, including whether they have been exhausted. Until respondent has done so and until after disposition of petitioner's petition for a writ of certiorari to the Supreme Court of Georgia, the Magistrate will not make a determination as to whether or not this petition is a mixed petition pursuant to Rose requiring petitioner to either elect to abandon the unexhausted claims or return to state court to exhaust them.

Accordingly, for the reasons stated above, the instant petition will be held in abeyance for a reasonable period of time and the parties are directed to

promptly notify the Magistrate in writing of any action taken on petitioner's petition for a writ of certiorari to the Georgia Supreme Court. If the petition for certiorari is not granted, the Magistrate will then make a determination as to whether or not the petition contains grounds which are unexhausted and whether to require petitioner to elect to abandon these claims or return to state court. In the meanwhile, respondent will have an opportunity to address the exhaustion issue as to those additional grounds raised in ground 4. If petitioner's petition for writ of certiorari is granted, the Magistrate will upon notification of such make a determination as to whether or not to dismiss this action as premature and unexhausted. In any event, if no action has been taken on the petition for writ of certiorari within 30 days, the parties shall report that fact to the Magistrate.

The Clerk is directed to hold this matter in abeyance and not resubmit the matter until further order of the Magistrate.

Let a copy of this Order be promptly served by mail upon petitioner and respondent Bowers, the Attorney General of the State of Georgia.

AND IT IS SO ORDERED this 25th day of February, 1988.

(signature)

ALLEN L. CHANCEY, JR.
UNITED STATES MAGISTRATE

(cont'd. next page)

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

JIM LEE SCOTT,	:	CIVIL ACTION
Plaintiff,	:	NO. 1:87-cv-2766-GET
vs.	:	ORDER FOR SERVICE OF
COURT OF APPEALS	:	REPORT AND
OF GEORGIA,	:	RECOMMENDATION OF
et al.,	:	UNITED STATES
Respondents.	:	MAGISTRATE

Attached is the report and recommendation of the United States Magistrate made in this action in accordance with 28 U.S.C. s636 (b) (1) and this Court's Local Rules 260 or 500. Let the same be filed and a copy, together with a copy of this Order, be served upon counsel for the parties.

Pursuant to 28 U.S.C. s636 (b) (1), each party may file written objections, if any, to the report and recommendation within ten (10) days of the receipt of

this Order. Should objections be filed, they shall specify with particularity the alleged error or errors made (including reference by page number to the transcript if applicable) and shall be served upon the opposing party. The party filing objections will be responsible for obtaining and filing the transcript of any evidentiary hearing for review by the District Court. If no objections are filed, the report and recommendation may be adopted as the opinion and order of the District Court and any appellate review of factual findings will be limited to a plain error review. United States v. Slay, 714 F.2d 1093 (11th Cir. 1983), cert. denied, 464 U.S. 1050, 104 S.Ct. 729 (1984).

The Clerk is directed to submit the report and recommendation with objections, if any, to the District Court after expiration of the above time period.

AND IT IS SO ORDERED this 25th day of Feb., 1988.

(signature)

(ALLEN L. CHANCEY, JR.)

UNITED STATES MAGISTRATE

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

JIM LEE SCOTT,	:	CIVIL ACTION
Plaintiff,	:	NO. 1:87-cv-2766-GET
vs.	:	MAGISTRATE'S REPORT
COURT OF APPEALS	:	AND RECOMMENDATION ON
OF GEORGIA,	:	RESPONDENT GEORGIA
et al.,	:	COURT OF APPEALS'
Respondents.	:	MOTION TO DISMISS

This petition for habeas corpus relief is presently before the Court on the motion of respondent Georgia Court of Appeals to dismiss on the ground of mootness. For the reasons that follow, the Magistrate recommends that the motion be granted and the Georgia Court of Appeals

be dismissed as a respondent in this action.

In March, 1987, petitioner Scott entered a plea of nolo contendere in the State Court of DeKalb County to simple battery and was sentenced to twelve months of unsupervised probation and payment of a $100 fine. Subsequently, petitioner's motion to vacate or withdraw his plea was denied by the trial court and petitioner appealed this decision to the Georgia Court of Appeals. Thereafter, on December 18, 1987, petitioner filed the instant petition for habeas corpus relief, alleging inter alia, that the respondent Georgia Court of Appeals had denied him the right to an effective appeal and violated his right to a speedy trial by not issuing a prompt decision. In its motion to dismiss filed January 14, 1988, the respondent Georgia Court of Appeals shows that a decision on petitioner's

appeal was entered by the Court on January 4, 1988. See Scott v. State, _____ Ga. App. _____ (Exhibit A to the motion to dismiss). Accordingly, the Magistrate agrees with respondent Georgia Court of Appeals that petitioner's petition against it has been rendered moot.

For the foregoing reasons, it is hereby recommended that the Georgia Court of Appeals be dismissed as a respondent in this action. Petitioner's remaining allegations against the respondent Bowers, Attorney General of the State of Georgia, will be the subject of a separate report and recommendation.

AND IT IS SO RECOMMENDED this 25th day of February, 1988.

(signature) _____

ALLEN L. CHANCEY, JR.

UNITED STATES MAGISTRATE

Ab 36

IN THE UNITED STATES DISTRICT COURT FOR

THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

JIM LEE SCOTT,

Petitioner,

v.

THE STATE OF GEORGIA,

MICHAEL J. BOWERS, ATT'Y. GEN'L.,

Respondent.

Case No. C87-2766A

(1:87-CV-2766-GET)

* * * * * * * * *

FULL ASSENT TO ORDERS AND RECOMMENDATION

NOW COMES the petitioner, pro se, to declare:

On Feb. 25, 1988, the truly learned United States Magistrate being assigned to make initial rulings in the above-styled habeas action authored two orders and a recommendation therein.

Contained within said Writings was the statement that "each party may file writ-

ten objections, if any, to the report and recommendation within ten (10) days of the receipt of" same.

Petitioner received his courtesy copy of these Writings in his mailbox on March 4, 1988.

Now the petitioner, really not having any objections as such to voice here, rather feels constrained instead to go on record voluntarily with his concurrences or assent.

Under the circumstances, the Ga. Ct. of App. should now be severed from being any specifically-designated respondent to this action. Likewise, under the circumstances, the attourney general of the government of petitioner's state should remain as a specifically-designated respondent thereto.

This petitioner may not be the sharpest appellate tactician around town: he certainly does not claim to be such. Per-

haps most practicioners would indeed look at this case and ask--why bother addressing these issues to our United States Supreme Court?

But this petitioner is not nearly so much a cautious practicioner as he is an idealistic crusader; he is not completely devoid of employing practicality, but he does lean heavily toward envisioning the pure ideal rather than resignedly observing that which may be deficient or corrupted though real.

When one is fighting for justice, should he really call up Las Vegas and ask for the latest odds on being able to find same from the source of last resort? Petitioner answers no to this, and thus we are D.C. bound, pursuing a fair finding by means which are as direct as possible, through petition for writ of review.

Petitioner prays the Honourable Magis-

trate to be longsuffering still, until this direct process of appellate procedure becomes exhausted, successfully or otherwise, between himself and his opposing party before our land's highest tribunal.

This tenth day of March, 1988.

Veritas,

(signature)

Jim Lee Scott, pro se
1075 Ormewood Ave. SE
Atlanta, Ga. 30316
627-5812

Ab 40

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

JIM LEE SCOTT,

Petitioner,

v.

THE STATE OF GEORGIA,

MICHAEL J. BOWERS, ATT'Y. GEN'L.,

Respondent.

Case No. C87-2766A

(1:87-CV-2766-GET)

CERTIFICATE OF SERVICE

I, Jim Lee Scott, the pro se author of the foregoing assent, do hereby certify that a copy of same is being mailed with the required first-class postage affixed to the opposing party in this case and to these designated others:

1. U.S. District Court Clerk's Office; Northern Dist., Atlanta Div.; 2211 U.S. Courthouse; 75 Spring St. SW; Atlanta,

Ga. 30335 (original and duplicate).

2. The Clerk Of The Georgia Supreme Court; ref. 45454; 572 State Annex Bldg.; 244 Washington St.; Atlanta, Ga. 30334.

3. The Clerk Of The Georgia Court Of Appeals; ref. 75189; 433 State Judicial Bldg.; Atlanta, Ga. 30334 (3 copies).

4. The Clerk Of The Superior Court Of DeKalb County; ref. 87-2720-6; DeKalb County Courthouse, 2nd floor; Decatur, Ga. 30030 (2 copies).

5. The Clerk Of The State Court Of DeKalb County; ref. 87C25356; DeKalb Co. Cthse., 4th floor ?; Decatur, Ga. 30030 (2 copies).

6. DeKalb County Att'ys. Albert Sidney Johnson & Herbert Adams, Jr.; One West Court Square, Suite 210; Decatur, Ga. 30030.

7. DeKalb County Solicitor Ralph L. Bowden; Ass't. Sol. Debra J. Blum; 500 DeKalb County Courthouse; Decatur, Ga.30030

8. Georgia Attourney General Michael J. Bowers; First Ass't. Att'y. Gen'l. H. Perry Michael; Senior Ass't. Att'y. Gen'l. Stephanie B. Manis; Ass't. Att'y. Gen'l. Mark H. Cohen; First Ass't. Att'y. Gen'l. Marion O. Gordon; Senior Ass't. Att'y. Gen'l. William B. Hill, Jr.; Ass't. Att'y. Gen'l. Dennis R. Dunn; 132 State Judicial Bldg.; Atlanta, Ga. 30334.

9. Hon. Allen L. Chancey, Jr.; U.S. Magistrate; 1683 U.S. Courthouse; 75 Spring St. SW; Atlanta, Ga. 30303.

10. Hon. G. Ernest Tidwell; U.S. District Court Judge; U.S. Courthouse; 75 Spring St. SW; Atlanta, Ga. 30303.

11. Hon. James H. Weeks; 304 DeKalb County Courthouse; Decatur, Ga. 30030.

12. Hon. Jack M. McLaughlin; 604 DeKalb County Courthouse; Decatur, Ga. 30030.

13. Hon. Ronald P. Jayson; Magistrate Court Judge; 4400 Memorial Drive; Decatur, Ga. 30032.

14. Att'y. Alice C. Stewart; 1400 Banksouth Bldg.; 55 Marietta St. NW; Atlanta, Ga. 30303.

15. Att'y. Franklin N. Biggins; 1400 Banksouth Bldg.; 55 Marietta St. NW; Atlanta, Ga. 30303.

16. Att'y. David J. Farnham; c/o Mohr & Farnham, P.C.; 741 Piedmont Ave., Suite 700; Atlanta, Ga. 30308.

This tenth day of March, 1988.

Veritas,

(signature)

Jim Lee Scott, pro se
1075 Ormewood Ave. SE
Atlanta, Ga. 30316
627-5812

Ac 44

FROM ALBERT W. ALSCHULER, PROFESSOR OF LAW, UNIVERSITY OF CHICAGO, THE UNIVERSITY OF CHICAGO LAW REVIEW, VOL. 50, NO. 3, SUMMER 1983, "IMPLEMENTING THE CRIMINAL DEFENDANT'S RIGHT TO TRIAL: ALTERNATIVES TO THE PLEA BARGAINING SYSTEM" from pages 931-2:

(T)he process of plea bargaining is not one which any student of the subject regards as an ornament to our system of justice.

--Justice William H. Rehnquist[1]

([1] Peterson, A Bad Bargain, TRIAL, May-June 1973, at 16, 16.)

The present state of affairs was brought about by willingness to reduce standards of justice to conform to the resources made available for its administration. I suggest the time has come for the judiciary to start moving in the other direction, and to insist on a return to first principles as quickly as possi-

ble.

--Justice Charles L. Levin[2]

([2] People v. Byrd, 12 Mich. App. 186, 223, 162 N.W.2d 777, 797 (1968) (Levin, J., concurring).

Those who predict disaster for our criminal courts system if we cease plea bargaining are really saying that the courts cannot provide a jury trial for all those who have a right to trial. If this assesment were true, then the courts should declare themselves bankrupt...But I do not believe the courts system will collapse under the weight of too many trials if we abandon plea bargaining.

--Judge Arthur L. Alarcon[3]

([3] Alarcon, Court Reform Would Solve The Problem, L.A. Times, Nov. 9, 1975, s 8, at 5, col. 4.)

from page 967, footnote:

Although this article has expressed considerable optimism about revised

courtroom procedures that would include the interrogation of prosecutors and defense attourneys, the parties to an improper bargain have an undeniable interest in concealing it. The proposed plea-acceptance procedures might inhibit illicit bargaining by lawyers but would be unlikely to reveal whatever bargaining occurred despite the ban. Moreover, today's courtroom procedures--procedures that seek answers only from defendants--are far less likely to succeed.

If the villain of a melodrama were to place a gun at the hero's head and require him to sign, first, a deed conveying his farm and, second, a paper declaring that there was no gun at his head, the second paper would be worth no more than the first. Moreover, the second paper would not gain value with the addition of more elaborate clauses and more emphatic denials. Similarly, a defendant's

affirmation of the voluntariness of his guilty plea at the time that he enters it adds almost nothing to the plea itself. This in-court affirmation is merely another piece of paper, and making the defendant's affirmation more detailed and elaborate cannot cure its inherent defects.

from pages 1006-7:

Nevertheless, our accusatorial rhetoric has been one thing and our inquisitorial practices another. Short of restoration of the rack and thumbscrew, a more blatant mockery of accusatorial ideals than today's practice of plea bargaining is difficult to conceive. In addition, Americans seek the self-incrimination of defendants through police interrogation. Miranda v. Arizona held that the products of custodial interrogation could be used at trial only when a suspect had made a knowing waiver of his right to remain si-

lent. As Judge Frankel has commented, however, and as any lawyer will advise any suspect, "rational people do not condemn themselves advisedly in the stationhouse." Frankel has noted that the target of a door-to-door vendor currently is allowed a few days of tranquil reflection before the law holds him to the purchase of a vacuum cleaner. If criminal suspects were afforded a similar opportunity to reconsider their more momentous choices made in a more coercive atmosphere, few of their supposedly intelligent waivers would be likely to survive...

from pages 1048-50:

CONCLUSION: The impediments to implementation of a plea bargaining prohibition are not worth a fraction of the paralysis that they have prompted. Americans certainly could afford full implementation of the right to jury trial in both felony and misdemeanor prosecutions.

Moreover, without additional expenditures, they could allocate existing resources more effectively by simplifying the trial process and making trials more available. Finally, states could easily substitute jury waiver bargaining for plea bargaining. Observers who proclaim that implementation of the right to trial is impossible have perpetrated a remarkable myth--one whose effectiveness depends largely on the "outsider's" fear of being thought naive or utopian and one that any glance outside our own legal system destroys.

At the end of a long investigation of plea bargaining, I confess to some bafflement concerning the insistence of most lawyers and judges that plea bargaining is inevitable and desirable. Perhaps I am wrong in thinking that a few simple precepts of criminal justice should command the unqualified support of fair-minded

people:

--that it is important to hear what someone may be able to say in his defense before convicting him of crime;

--that, when he denies his guilt, it is also important to try to determine on the basis of all the evidence whether he is guilty;

--that it is wrong to punish a person, not for what he did, but for asking that the evidence be heard (and wrong deliberately to turn his sentence in significant part on his strategies rather than on his crime);

--and, finally, that it is wrong to alibi departures from these precepts by saying that we do not have the time and money to listen, that most defendants are guilty anyway, that trials are not perfect and that it is all an inevitable product of organizational interaction among stable courtroom work groups, and that any

effort to listen would merely drive our failure to listen underground.

From my viewpoint, it is difficult to understand why these precepts are controversial; what is more, I do not understand why the legal profession, far from according them special reverence, apparently values them less than the public in general does.[516]

([516] Professor Stephen J. Schulhofer once wrote that a paper like this one ought to consider not only the economic feasibility of prohibiting plea bargaining but the political feasibility of doing it as well. Schulhofer, supra note 506, at 779 n.184. I claim no powers of political punditry, but I once expressed some views on the issue in a conversation with a congressional staff member who had asked what position I thought the Chairman of the Senate Judiciary Committee ought to take. When I suggested that the Senator ought

to introduce legislation to prohibit plea bargaining, the staff member appeared somewhat stunned. "My goodness," he said, "we'd have the United States Attorneys against us, and the federal judges, and the defense attorneys too."

"Yes," I replied, "and who else?" The staff member's comment obviously had not accounted for as much as one percent of the voting population.

Plea bargaining is a "strange bedfellows" issue that typically unites the president of the inmates' union and the local police chief in denouncing the hypocrisy of the criminal justice system. Although lawyers tend to approve of the practice, corrections officials, police officers, victims of crime, civil libertarians, "law and order" conservatives, and most other members of the public tend not to. The only public opinion poll on the issue of which I am aware showed 70 %

of those polled opposed to the practice and 21 % in favor. D. FOGEL, "...WE ARE THE LIVING PROOF..." 300 (app. III) (1975). A basic question comes to mind: Who owns the criminal justice system?)

Daniel Webster thought it a matter of definition that "law" would hear before it condemned, proceeed upon inquiry, and render judgment only after trial.[517] ([517] Trustees of Dartmouth College v. Woodward, 17 U.S. (4 Wheat.) 518, 581 (1819) (argument of D. Webster for plaintiffs in error, Mar. 10, 1818), reprinted in 5 D. WEBSTER, THE WORKS OF DANIEL WEBSTER, 487-88 (Boston 1851).)

Apparently the legal profession has lost sight of Webster's kind of law, and, for all the pages that I have written about plea bargaining, the issue in the end may be that simple.

(cont'd. next page)

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BIBLIOGRAPHY (PARTIAL)

Implementing the Criminal Defendant's Right to Trial: Alternatives to the Plea Bargaining System, 50 U. CHI. L. REV. 931 (1983).

The Changing Plea Bargaining Debate, 69 CALIF. L. REV. 652 (1981).

Plea Bargaining and Its History, 79 COLUM. L. REV. 1 (1979).

The Trial Judge's Role in Plea Bargaining (pt. 1), 76 COLUM. L. REV. 1059 (1976).

The Prosecutor's Role in Plea Bargaining, 36 U. CHI. L. REV. 50 (1968).

The Supreme Court, the Defense Attorney, and the Guilty Plea, 47 U. COLO. L. REV. 1 (1975).

Sentencing Reform and Prosecutorial Power: A Critique of Recent Proposals for "Fixed" and "Presumptive" Sentencing, 126 U. PA. L. REV. 550 (1978).

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The Defense Attorney's Role in Plea Bargaining, 84 YALE L.J. 1179 (1975).

Book Review, 12 CRIM. L. BULL. 629 (1976).

Book Review, 66 LAW LIBR. J. 122 (1973).

Book Review, 46 U. CHI. L. REV. 1007 (1979).

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FROM LUKE 18:1-8a (KJV)

And he spake a parable unto them to this end, that men ought always to pray, and not to faint;

Saying, There was in a city a judge, which feared not God, neither regarded man:

And there was a widow in that city; and she came unto him, saying, Avenge me of mine adversary.

And he would not for a while: but afterward he said within himself, Though I fear not God, nor regard man;

Yet because this widow troubleth me, I will avenge her, lest by her continual coming she weary me.

And the LORD said, Hear what the unjust judge saith.

And shall not God avenge his own elect, which cry day and night unto him, though he bear long with them?

I tell you that he will avenge them

Ad57

speedily...